



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

December 10, 1991

Mr. Lee Clark  
City Attorney  
City of Pasadena  
P. O. Box 672  
Pasadena, Texas 77501

OR91-635

Dear Mr. Clark :

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 14035.

You have received a request for information relating to a community redistricting committee. Specifically, the requestor seeks "the nominations for a community redistricting committee submitted to [the mayor] recently from all six Pasadena City Council members." You claim that the requested information "does not constitute information collected, assembled, or maintained pursuant to law or ordinance" and is not subject to the Open Records Act. You further claim that the requested information is excepted from required public disclosure by sections 3(a)(1), 3(a)(6), 3(a)(9), and 3(a)(11).

Section 3(a) of the Open Records Act makes public:

All information collected, assembled, or maintained by or for the governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public . . . .

Section 2(1)(B) defines "governmental body" for purposes of the act as:

the commissioners court of each county and the city council or governing body of each city in the state.

You advise us that the requested information includes handwritten notes made by the mayor and city council members concerning the possible creation of and appointments to a community redistricting committee. This information, then, was created by a "governmental body," as expressly defined by the act, in the "transaction of official business." We conclude, then, that the requested information is subject to the Open Records Act. *See* Open Records Decision Nos. 450 (1986); 116 (1975).

You claim that the requested information is excepted from required public disclosure by the privacy right interests of sections 3(a)(1) and 3(a)(9). Your privacy argument involves the privacy rights of those making the recommendation, as well as those being recommended. The common-law privacy test for sections 3(a)(1) and 3(a)(9) are the same. *See* Open Records Decision No. 506 (1988) at 3. In *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court ruled that common-law privacy excepts only "information contain[ing] highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public." Where important public figures are involved, a legitimate public concern may overcome any right of common-law privacy. *See* Open Records Decision No. 455 (1987).

The requested information consists of information relating to the discharge of official duties by the mayor and city council members. None of the information is "intimate" or "embarrassing," and all of it is of legitimate concern to the public. Accordingly, the requested information may not be withheld from required public disclosure under sections 3(a)(1) and 3(a)(9). *See* Open Records Decisions Nos. 241 (1980); 212 (1978).

You also claim that the requested information is excepted from public disclosure by sections 3(a)(6) and 3(a)(11). Sections 3(a)(6) and 3(a)(11) have been construed to protect from required public disclosure the same kinds of information. Open Records Decision No. 429 (1985) at 5. Section 3(a)(11) is designed to protect advice and opinions on policy matters and to encourage frank and open discussion

within the agency in connection with its decision-making processes. *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.), citing Open Records Decision No. 222 (1979). Open Records Decision No. 439 (1986) at 2 (copy enclosed) held that the Open Records Act requires the disclosure of both the names and resume information about candidates recommended for government employment. That decision held:

[W]e fail to see how public disclosure of the names and backgrounds of the candidates being considered, as opposed to discussions of those candidates' attributes, would inhibit the free flow of discussion . . . within the agency. The legitimate governmental interest is in protecting agency deliberations concerning job applicants, not the applicants' identities and backgrounds.

*Id.* at 3. We conclude, then, that the names of those recommended to serve on the proposed community redistricting board may not be withheld from required public disclosure by sections 3(a)(6) and 3(a)(11) of the Open Records Act. The requested information must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-635.

Yours very truly,



Kay H. Guajardo  
Assistant Attorney General  
Opinion Committee

KG/GK/lcd

Enclosures: Open Records Decision Nos. 439; 241

Ref.: ID# 14035

cc: Mr. Scott Streater, Reporter  
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